

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT: R. O'Neal Gray

EXAMINER: Ahshik Kim

SERIAL NO.: 10/821988

ART UNIT: 2876

FILING DATE: April 12, 2004

DOCKET NO: 19251/105040-00

TITLE: System and Method for Facilitating the Purchase of Goods and Services

ATTENTION:

Board of Patent Appeals and Interferences  
600 Dulany Street  
Madison West, 9<sup>th</sup> Floor  
Alexandria, Virginia 22314

TRANSMITTAL OF APPEAL BRIEF

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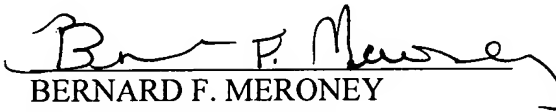
OCT 01 2006

Applicants submit herewith Appellants' Appeal Brief as well as a check in the amount of \$250.00 to cover the filing fees required under 37 CFR 1.17(f).

U.S. PATENT AND TRADEMARK OFFICE  
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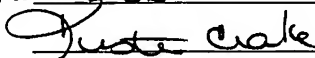
Respectfully Submitted,

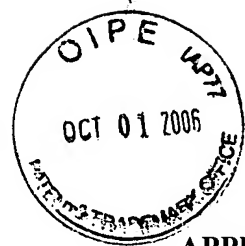
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**APPELLANTS' APPEAL BRIEF**

**REAL PARTY IN INTEREST**  
(37 C.F.R. § 41(c)(1)(i))

The real party in interest is the assignee, Quake! LLC.

**RELATED APPEALS AND INTERFERENCES**  
(37 C.F.R. §41.37(c)(1)(ii))

There are no related appeals or interferences.

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**STATUS OF THE CLAIMS**  
(37 C.F.R. §41.37(c)(1)(iii))

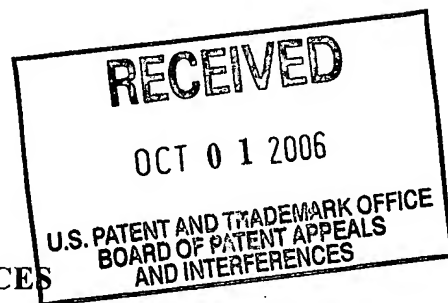
The application was filed on April 12, 2004 with six (6) claims of which claims 1 and 4 are independent claims.

The status of the claims is as follows:

allowed claims ---none

claims objected to ---none

claims rejected ---all pending



**STATUS OF AMENDMENTS**  
(37 C.F.R. §41.37(c)(1)(iv))

There have been no amendments requested nor entered.

**SUMMARY OF CLAIMED SUBJECT MATTER**  
(37 C.F.R. §41.37(c)(1)(v))

The invention, as specified in the independent claims, is as follows:

**Claim 1.**

Claim 1 is directed to a system for facilitating commercial transactions between a consumer and a supplier of goods or services at a point of sale, where the transactions must be authorized by the credit holder (the individual having an account with a credit issuer, such as a bank) (page 4, lines 1-23). The system includes

- (1) A credit holder communications device (credit holder device 12) with a memory for pre-storing transaction information in a database (page 4, lines 6-10; page 5 lines 11-14);
- (2) A consumer communications device (consumer device 10) that communicates between the consumer and the supplier of goods and services; (page 4, lines 5-13);
- (3) A transaction approval device (approval entity device 36) in communications with the supplier of goods and services and the credit holder communications device (page 6, lines 4-8).

The credit holder communications device is operated by the credit holder (the person “owning” or holding an account at a bank or financial institution), while the approval entity is a bank or other financial type institution at which the credit holder has an account (page 4, lines 21-24). The consumer is the person trying to complete a transaction with the supplier of goods and services (page 4, lines 12-21).

The consumer communications device generates a consumer request for the credit holder to authorize a particular transaction (please pay for). (Page 4 lines 19-21). The transaction approval device receives the transaction information from the supplier (transaction information) (page 6, lines 14-18) and transmits a request for approval to the credit holder (through the credit holder communications device) (page 6, lines 6, lines 18-20). The financial institution receives authorization from the credit holder through communications between the credit holder device and the transaction approval device (page 6, lines 18-24) and transmits the authorization approval to the supplier of goods so that the transaction can be completed (that is, paid for or payment denied by the credit holder) (page 6, lines 7 lines 1-4).

Hence claim 1 is directed to communications between four parties: the consumer, the supplier of goods/services, the transaction approval entity (e.g. a bank or other financial type entity issuing a credit); and the credit holder (the party holding the account or credit issued by the transaction approval entity and from which the consumer is trying to access). Communications are established and using three devices: a consumer device, a transaction financial institution device and a credit holder device, with the communications being to request the credit holder to authorize a transaction between the consumer and the supplier.

### **Claim 2**

Claim 2 is directed to the system of claim 1 where the credit holder communication device is located remote from the consumer communications device (page 7, lines 5-8).

### **Claim 3**

Claim 3 is directed to the system of claim 1 where the credit holder communications device and the consumer communications device are a telephone, PDA, wireless

communications device, desktop or notebook computer. (page 4, lines 6-10; page 5 lines 7-10).

#### **Claim 4**

Claim 4 is directed to a method for facilitating a transaction between a consumer and supplier of goods at a point of sale, where the transaction is authorized by a credit holder. The method is directed to communications between three devices: (1) a consumer communications device; (2) a credit holder communications device; and (3) a transaction approval device (page 4 lines 5-15; page 6, lines 4-8). The method includes the steps of:

(a) prestoring transaction information in a database of a credit holder communications device including a memory device where the credit holder communications device is operable by the credit holder (page 5, lines 11-14);

(b) establishing a communications link using a consumer communications device between the consumer and the supplier of goods and services (page 4, lines 12-20);

(c) the consumer communications device generating a consumer request to the credit holder communications device to authorize the transaction (page 4, lines 19-23);

(c) receiving at a transaction approval device (in communications with the supplier of goods and services and the consumer requested credit holder communications device) a transaction request from the supplier of goods and services (initiated by the consumer utilizing the consumer communications device) (page 5, lines 4-6);

(d) receiving at the transaction approval device information and authorization from the credit holder communications device; (page 5, lines 16-22);

(e) transmitting from the transaction approval device transaction approval (upon receipt of transaction information data transaction authorization from the credit holder device) to the

supplier of goods and services to complete the transaction initiated by the consumer (page 6, lines 3-9).

**Claim 5**

Claim 5 is directed to the method of claim 4 where the credit holder communication device is located remote from the consumer communications device (page 7, lines 5-8).

**Claim 6**

Claim 6 is directed to the method of claim 4 where the credit holder communications device and the consumer communications device are a telephone, PDA, wireless communications device, desktop or notebook computer. (page 4, lines 6-10; page 5 lines 7-10).

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

(37 C.F.R. §41.37(c)(1)(vi))

The issues presented on appeal are:

Whether claims 1 – 6 are anticipated under 35 U.S.C. §102(b) by Davis.

**ARGUMENT**

(37 C.F.R. §41.37(c)(1)(vii))

**REJECTION UNDER 35 U.S.C. 102(B)**

The examiner has rejected claims 1-6 as anticipated by Davis.

## THE CITED PRIOR ART

### **The Teachings of Davis:**

Davis describes a secure messaging system using a particular transmission format. In Davis, a customer uses a financial messaging unit 906 (generally described as a paging unit and smart card) in a secure financial transaction (col. 17, lines 1-10). A transaction using such a device is described in general in figures 15 and 16, and described in Col. 21, line 25 – Col. 26, line 59.

The customer calls the bank or financial institution and requests the initiation of a financial transaction. The customer enters the account information, user id, and other relevant required data, which is sent to the bank. (Col. 21, lines 59-65). The bank or regulator receives the information and verifies the account information, and approves or denies the requested transaction. Col. 21, line 65 – col. 22 line 11 (for approval); Col. 22 line 13 – line 23 (for transaction denial). Upon approval, the transaction is complete by the bank or regulator sending a message (a secure transaction message) to be received by the customer's financial messaging unit 906 indicating funding the account, or loading of information onto a smart card. As described, the messaging unit 906 lies dormant until it receives and recognizes a selective call address 1404, indicating that the unit is in communication with a financial institution. Col. 21, lines 25-40. The unit then determines if the bank or institution is a recognized bank with a user account. Col. 21, lines 30-36. The unit then receives and decodes the financial information in the secured financial message. Col. 21, lines 39-43 (decoding is undertaken by a Smart Card function module 1014). Upon decoding, the unit will then execute instructions relevant to the particular transaction. Col. 21 lines 50-55 (such as loading the Smart Card with a credit entry, etc).

Hence, the Davis disclosure deals with a user request for a financial transaction in the context of a financial institution transaction, using a smart card as the financial transaction instrument, with a pager as the communication instrument. Davis is specifically directed to a transaction between the user and a bank or other financial institution, where the bank or financial institution is required to approve the transaction with financial information pertinent to the approved transaction sent to the message unit 906 for decoding. The Davis disclosure does indicate that the decoding algorithm used to secure the transaction can be used to decode information exchanges between a smart card and a merchant information (col. 18, lines 12-15), but Davis does not describe use of the invention in a merchant transaction. Indeed, the Davis disclosure only mentions “merchant” in this single location. Davis is not directed to use of the device for merchant credit authorization by one other than the customer initiating the transaction.

This is very different from applicant’s claimed invention. Applicant’s invention deals with a system for facilitating transactions between a consumer and a supplier of goods and services, which transaction are to be authorized by a credit holder. However, in applicant’s invention, a “credit holder” is not a bank or other financial institution (the credit lender or issuer) but a bank customer or patron. The credit holder (bank customer) has a communications device for use in a transaction. See Page 3, paragraph 0005. The credit holder uses the communication device to authorize a transaction, after receiving a request for authorization from the approval entity (such as a bank or other financial entity).

Consider the following transaction: a customer initiates a transaction at a point of sale, such as a purchase of a book at a book merchant, using a smart card, smart mobile phone or other consumer communications device. Assume a smart card issued by Bank B to a person, the Credit Holder. Positioned between the merchant and the Credit Holder, is a transaction



approval device or the approval entity device (such as the issuing bank B computer or credit card processing company computer) (see page 4, paragraph 007, last three lines). The transaction approval device (bank B) receives the transaction information (request for authorization) from the merchant and forwards the request for authorization to the credit holder (the bank patron). The Credit Holder (bank patron) uses the communications device to inform the approval entity (Bank B) of his approval or denial, (note, the intermediary bank will usually have the independent ability to deny a transaction approved by the Credit Holder if the Credit Holder's credit is insufficient for the transaction at issue). Once the intermediary bank receives the credit holder's approval of the transaction, the intermediary bank sends approval/denial status to the merchant with needed transaction information to complete the transaction. Hence, applicant's invention allows for the Credit Holder to approve a transaction requested by a customer. For instance, the customer could be a minor having a parent's credit card. When the child tries to use the parent's card, the parent (through the communication device) is notified of the pending transaction and the parent must authorize the transaction through the communications device. Claim 1 exemplifies this transaction:

1. A system for facilitating commercial transactions between a consumer and a supplier of goods and services at a point of sale which transactions are authorized by a credit holder comprising:

a credit holder communications device [E.G. CELL PHONE] including a memory device for prestoring transaction information in a database, said credit holder communications device being operable by the credit holder [BANK'S CUSTOMER] for generating transaction information data and transaction authorization;

a consumer communications device [E.G. SMART CARD] for establishing a communications link between the consumer and the supplier of goods and services, said consumer communications device generating a consumer request to said credit holder communications device;

a transaction approval device {E.G. FINANCIAL INSTITUTION COMPUTER} in communications with the supplier of goods and services and the consumer requested credit holder communications device for receiving transaction requests from the supplier of goods and services initiated by the consumer utilizing said consumer communications device and for receiving transaction information data and authorization from said credit holder [BANK CUSTOMER] communications device; and

said transaction approval device upon receipt of transaction information data and transaction authorization, transmitting approval to the supplier of goods and services to complete the transaction initiated by the consumer utilizing said consumer communications device.

For applicant, the credit holder is not a bank, but a bank customer. Davis does not discuss or suggest having a bank of financial intermediary contact a credit holder [e.g. bank customer) though a credit holder communications device to request transaction authorization. Hence, Davis cannot anticipate claim 1-6.

### **The Examiner's Reading of Davis**

The examiner has interpreted the "credit holder" as the party holding and maintaining the "customer's account." In applicant's invention, the customer is not an account holder; instead, the customer is trying to access another's account (the credit holder) to pay for a

transaction initiated by the customer. For instance, the transaction could be initiated by a child who tries to access his/her parent's account to pay for the transaction. Applicant's invention requires that a request be sent to the parent's communication device (the credit holder communication device) for parental approval of the child's initiated transaction. The examiner has argued that Davis does not require that the credit holder be a bank, and points to the Davis specification where the smart card is referenced as a consumer communication device. (examiners response, page 3 lines 15-20). The consumer communications device, however, disclosed in Davis is the financial messaging unit 906 (described in detail at col. 1, line 45-col. 13, lines 6, where the financial messaging unit can be smart card 920; see also col. 17, lines 1-10). Davis describes the user (consumer) using the financial messaging unit 906 to initiate a transaction with a bank or financial institution to load credits onto the smart card, pay with credit from the smart card, etc (col. 18, lines 17- 25 (the message entry device 1018 describe here is a portion of the smart card, see Davis figure 10). Hence, Davis describes the messaging unit as a remote ATM (col. 18, lines 25-30). However, Davis does not describe or teach the bank or other financial institution, upon receiving a request to load the smart card, pay with the smart card, etc, as sending a request to another device (the credit holder device in applicant's disclosure) to approve the transaction initiated by the user of the smart card. Davis deals with transactions using only two interfacing devices, the user communications device (the financial message unit 906), and the bank authorization device. There is no disclosure of a separate device held by the credit holder (owner of the account), nor should there be, as Davis is not directed to a system for authorizing a consumer transaction by sending a request to the credit holder device for approval of the transaction. Indeed, Davis's approval comes from the bank once the bank verifies that the user is authorized to use the device (such as by requiring a PIN to be provided).

### Claim 1 and 4

Applicant's Claim 1 and 4 uses three devices in a particular communication sequence: a consumer communications device that interfaces a transaction approval device, and the transaction approval device interfaces the credit holder's account (the transaction approval device is positioned between the credit holder's device and the consumer's communication device). A transaction request is initiated by the consumer, and the request to use the credit holder's account is also initiated by the consumer. The transaction approval device receives this information, and passes this information to the credit holder's communication device. Upon receipt, the credit holder approves the transaction (accept or deny). This approval information is received by the transaction approval device, and transmitted to the merchant (not the consumer to complete the transaction (e.g. sale complete, or transaction denied)).

Davis does not disclose the three separate devices communicating in the sequence described above.

The examiner is citing Davis for features that are simply not found in the reference.

### **CONCLUSION**

Davis simply does not teach Applicant's claimed invention. Applicant therefore believes that the application is now in condition for allowance. Applicants request that the Board of Patent Appeals and Interferences give consideration to the arguments presented herein and

that the prosecution of this case be remanded to the primary examiner with a recommendation that the application be allowed.

Respectfully Submitted,

DATE: 10/23/06

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service in an envelope addressed to: ATTENTION: Board of Patent Appeals and Interferences; 600 Dulany Street, Madison West, 9<sup>th</sup> Floor, Alexandria, Virginia 22314 on this 24 day of October, 2006.

Michael Crake

**APPENDIX OF CLAIMS ON APPEAL**  
(37 CFR 41.37(c)(1)(viii))

Claims:

1. A system for facilitating commercial transactions between a consumer and a supplier of goods and services at a point of sale which transactions are authorized by a credit holder comprising:

a credit holder communications device including a memory device for prestoring transaction information in a database, said credit holder communications device being operable by the credit holder for generating transaction information data and transaction authorization;

a transaction approval device in communications with the supplier of goods and services and the consumer requested credit holder communications device for receiving transaction requests from the supplier of goods and services initiated by the consumer utilizing said consumer communications device and for receiving transaction information data and authorization from said credit holder communications device; and

said transaction approval device upon receipt of transaction information data and transaction authorization, transmitting approval to the supplier of goods and services to complete the transaction initiated by the consumer utilizing said consumer communications device.

2. The system of claim 1 wherein said credit holder communications device and said consumer communications device are located at remote locations from each other.

3. The system of claim 1 wherein said credit holder communications device and said consumer communications device is selected from the group comprising a telephone, personal digital assistant, wireless communications device, desktop computer and notebook computer.

4. A method for facilitating commercial transactions between a consumer and a supplier of goods and services at a point of sale which transactions are authorized by a credit holder comprising:

    prestoring transaction information in a database of a credit holder communications device including a memory device, the credit holder communications device being operable by the credit holder for generating transaction information data and transaction authorization;

    establishing a communications link using a consumer communications device between the consumer and the supplier of goods and services, the consumer communications device generating a consumer request to the credit holder communications device;

    receiving at a transaction approval device in communications with the supplier of goods and services and the consumer requested credit holder communications device, transaction requests from the supplier of goods and services initiated by the consumer utilizing the consumer communications device and for receiving transaction information data and authorization from the credit holder communications device; and

    transmitting approval from the transaction approval device upon receipt of transaction information data transaction authorization, to the supplier of goods and services to complete the transaction initiated by the consumer utilizing the consumer communications device.

5. The method of claim 4 wherein the credit holder communications device and the consumer communications device are located at remote locations from each other.

6. The method of claim 4 wherein the credit holder communications device and the consumer communications device is selected from the group comprising a telephone, personal digital assistant, wireless communications device, desktop computer and notebook computer.

**Evidence Appendix**

(37 CFR 41.37(c)(1)(ix))  
NONE

**Related Proceedings Appendix**

(37 CFR 41.37(c)(1)(x))  
NONE